IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Second Appeal No. 502/2001
(Old No. 82/1994)

1- Bahadur Singh S/o Banwari Singh
R/o Pipalwali Dharamshala Evum Gaushala,
Kshetra Road, Rishikesh.
2- Km. Brish Bhan Kumari D/o Bahadur Singh,
3- Balbir Singh alias Ashok Kumar
S/o Bahadur Singh
4- Km. Naraini Devi D/o Bahadur Singh
All R/o Pipalwali Dharamshala Evum Gaushala,
Kshetra Road, Rishikesh ..... Appellants.

Vs

1- Baba Kali Kamli Wala, Panchayati Kshetra,
Rishikesh, a Society registered under
Societies Act, through its Manager Baldev Sahay
Rishi Lajpat Rai Road, Rishikesh,
District Dehradun.
2- Baldev Sahay Rishi, Manager Baba Kali Kamli
Wala, Panchayati Kshetra Rishikesh, Dehradun.
3- R.N. Ojha, property Manager, Baba Kali Kamli
Wala, Panchayati Kshetra, Rishikesh
District Dehradun ... Respondents.

Sri R. Dobhal, learned counsel for the appellants.
Sri Munish Bhardwaj, Advocate for the respondents.

Hon'ble B.C. Kandpal, J.

This Second Appeal, U/S 100 C.P.C. has been preferred against the judgment and decree dated 14-10-1993, passed by Addl. Civil Judge-Ist Dehradun in Civil Appeal No. 53 of 1979, dismissing the appeal and confirming the judgment and decree dated 21-4-1979, passed by Munsif Dehradun in O.S. Jo. 93 of 1977 Bahadur Singh overs vs. Baba Kali Kamli Wala and others.

2- Brief facts of the case are that the plaintiffs/appellants filed a civil suit before the Munsif Dehradun for permanent injunction on the ground that they are the owner of Pipalwali Dharamshala and Gaushala Kshetra Panchayati Rishikesh. The plaintiffs/appellants were residing in the Gaushala of the Dharamshala for last 40 years and they were using the Rasta for reaching the Gaushala, shown with letters 'G' "F' in the map attached with the plaint. According to them defendants 1 and 2 are looking after the said property. On 17-4-1977 both the defendants took forcible possession of two rooms from the plaintiffs shown with letters 'E' 'F' in the map. They also demolished the wall in front of these rooms. The defendants also threatened to raise a wall at the place in between letters 'A' 'B' and to stop the way in between the Dharamshala and the residential building of the plaintiffs shown with letter "C" 'D'. It was also alleged that the defendants had no right to stop the 'Rasta'. Therefore, the plaintiffs/appellants prayed for permanent injunction restraining the defendants/respondents no to raise any wall in between letters 'A' 'B' and also restraining them not to cause any obstruction in the use of rastas shown with letters 'G' 'H' and 'C' 'D'.

3- The defendants filed their W.S. and alleged that the plaintiffs are not the owners of the disputed property. Pipalwali Dharamshala has been in the ownership of defneant No.1. The plaintiffs have no right to use the disputed Rastas.

4- The Munsif on the basis of pleading of parties framed relevant issues in the original suit. Thereafter parties led evidence in support of their case. The trial Judge after hearing the parties and perusing the

material on record dismissed the suit of the plaintiffs, vide judgment and decree dated 21-4-1979.

5- Feeling aggrieved, the plaintiffs preferred appeal before the Addl. Civil Judge-I Dehradun. The learned Civil Judge vide impugned judgment and order dated 14-10-1993 dismissed the appeal.

6- The plaintiffs/appellants against the impugned judgment and decree dated 14-10-1993 has preferred this Second Appeal before the Allahabad High Court, which has beens transferred to this court after creation of new State.

7- In the memo of appeal following substantial questions of law have been formulated by the appellants:

1- Whether the findings on issue no.1 is against the evidence on records?.

2- Whether the appellant has fully proved by the documentary evidence 17-Ka that the deed executed in 1933 by Jamuna Mai had already been cancelled by Jamuna Mai itself and subsequently she has executed a will in favour of Smt. Leela Devi, wife of the appellant and by virtue of said will the appellant is in possession voer the property in dispute?.

3- Whether the appellant has fully proved that he is in possession voer the disputed property for last about 45 years but the courts below have not considered the same?.

8- Heard learned counsel for the parties and perused the record.

9- The courts below have recorded the finding that original suit between the parties with regard to declaration of ownership of the disputed property is pending before II Addl. Civil Judge Dehradun, in which the dispute of ownership has to be decided, hence the issue of ownership has not been considered.

10- The issues of possession of the plaintiffs/appellants over a portion of Gaushala within the premises of Dharamshala and use of disputed Rastas by the plaintiffs/appellants shown with letters G' 'H' and 'C' 'D' were considered by the appellate court. The plaintiffs/appellants in their plaint have admitted that on 17-4-1977 the defendants dispossessed them from rooms 'E' 'F' and changed their shapes and the defendant No.1 took possession over these rooms. Therefore, the plaintiffs/appellants now have no concern to use the Rasta. It has also come in evidence that the disputed Rastas are situated within the property of Dharamshala and no question of their use by plaintiffs arise, in the event of their dispossession from the disputed rooms.

11- So far as the deed executed by Jamuna Mai in 1933 is concerned, the same had already been cancelled by Jamuna Mai herself. The plaintiffs could not prove the document 17-A. The plaintiff Bahadur Singh has appeared before the trial court as P.W.1. He was not able to tell the name of the owner of the disputed property shown in the revenue record. He also deposed that he never paid water tax and house tax of the disputed rooms. This witness also could not prove the so called will executed by Jamuna Mai in favour of his wife Smt. Leela Devi. This witness also accepted that the defendants used to take the rent of the rooms

of the Dharamshala after the death of Jamuna Mai from 1967 to 1970. Thereafter this witness shown his ignorance to the suggestion that now the defendants collect the rent of the rooms of the Dharamshala. Undisputedly Jamuna Mai had no heir and the plaintiffs/appellants have not been able to prove by reliable and cogent evidence as to how they have come in possession of the disputed property.

12- Both the courts below have recorded a concurrent finding with regard to the possession of the disputed rooms and the use of rastas in dispute by the plaintiffs/appellants and I find no illegality and impropety in it. The factual aspect of the case has been dealt with by the lower appellate court and in the second appeal the finding of fact howsoever erroneous may be, cannot be interfered with. I find no ground to interface with the finding of both the courts below. The substantial questions of law formulated in the memo of appeal have no substance and are answered against the plaintiffs/appellants.

13- In the result the appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed.

(B.C. Kandpal, J.)

Dated: October 26, 2006.
Aswal.